

STATE OF MICHIGAN
COURT OF APPEALS

CAROLE LOMBARDINI,

Plaintiff-Appellee,

v

WOODLAWN CEMETERY ASSOCIATION,
INC.,

Defendant-Appellant,

and

RENARD JENKINS,

Defendant.

UNPUBLISHED

October 3, 2000

No. 212623

Wayne Circuit Court

LC No. 96-618915-NI

Before: White, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Defendant Woodlawn Cemetery Association appeals as of right from an order entering judgment on a jury verdict finding defendant Woodlawn liable as the owner of an automobile that repeatedly struck, and severely injured, plaintiff, a pedestrian. Woodlawn was ordered to pay damages totaling over \$460,000. We reverse.

When the accident occurred, the automobile involved was being driven by defendant Renard Jenkins.¹ Plaintiff sought to recover not only from Jenkins for his negligence, but from defendant Woodlawn as the owner of the vehicle. Woodlawn maintained that Jenkins purchased the vehicle shortly before the accident and, therefore, it was not the owner and was not responsible for plaintiff's injuries.

Woodlawn first argues that the trial court erred in denying its motions for a directed verdict and for judgment notwithstanding the verdict (JNOV). We disagree. This Court reviews a trial court's

¹ Defendant Jenkins did not appear at trial, and is not participating in this appeal.

decision on a motion for a directed verdict de novo as a question of law. *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997). This Court also reviews de novo a trial court's decision on a motion for JNOV. *Attard v Citizens Ins Co of America*, 237 Mich App 311, 321; 602 NW2d 633 (1999). When reviewing a trial court's decision on a motion for a directed verdict, this Court views the evidence in a light most favorable to the nonmoving party to determine whether a factual question exists over which reasonable minds could differ. *Oakland Hills Development Corp v Lueders Drainage Dist*, 212 Mich App 284, 289; 537 NW2d 258 (1995). Similarly, when reviewing a trial court's denial of a defense motion for JNOV, this Court examines the evidence in the light most favorable to the plaintiff to determine whether the evidence presented a question for jury resolution. *Attard, supra* at 321.

Here, reasonable minds could differ with respect to whether or when ownership of the vehicle involved in the accident shifted from Woodlawn to Jenkins. Woodlawn cites no authority for the proposition that the information written on the back of a certificate of title concerning transfer of ownership cannot be rebutted. At trial, plaintiff questioned the accuracy of the date indicated on the certificate of title marking the transfer of ownership, and suggested that the defense witnesses were falsely stating whether or when Jenkins became the owner of the vehicle in hopes that Woodlawn would avoid liability in this instance.

The police officer attending to the accident scene testified that the car involved had no license plates. The testimony of Woodlawn's CEO that Woodlawn's vehicles always had license plates supported Woodlawn's contention that Woodlawn had sold the vehicle before the time of the accident. However, Woodlawn's general manager's testimony that not all of Woodlawn's vehicles had license plates contradicted the CEO's testimony suggesting that the vehicle had plates that were removed upon sale to Jenkins. Evidence that the vehicle had no plates while owned by Woodlawn, and still did not have them when involved in the accident, constitutes competent evidence that there had been no recent change in the vehicle's legal ownership status at the time of the accident. Further, testimony that the official records with the Secretary of State did not show Jenkins *ever* owning the automobile, or even having a driver's license, legitimately bore on the question whether Woodlawn in fact ever transferred ownership of the vehicle to him, and provided the jury with some basis for suspecting Woodlawn's representations.

Thus, the trial court properly allowed the jury to assess the credibility of the witnesses and the veracity of the certificate of title. Because reasonable minds could conceivably have differed over these matters, the trial court did not err in submitting the question of vehicle ownership to the jury, or in accepting the jury's conclusion in the matter. Accordingly, the trial court properly denied Woodlawn's motions for a directed verdict and for JNOV.

Woodlawn next argues that the trial court erred in admitting the testimony of a Secretary of State employee regarding whether and when ownership of the vehicle in question transferred from Woodlawn to Jenkins, and that the trial court further erred in failing to give a cautionary instruction regarding the testimony. We agree. We review a trial court's rulings regarding the admission or exclusion of evidence for an abuse of discretion. *Lagalo v Allied Corp (On Remand)*, 233 Mich App 514, 517; 592 NW2d 786 (1999).

The witness testified repeatedly that ownership remained with the seller unless and until the buyer's name appeared in the space allotted on the back of the certificate of title. However, the formalities for transferring ownership of a motor vehicle are set forth in MCL 257.233; MSA 9.1933. At the time of the accident in question, the pertinent statutory provisions² read as follows:

(4) The owner shall indorse on the back of the certificate of title an assignment of the title with warranty of title in the form printed on the certificate with a statement of all security interests in the vehicle or in accessories on the vehicle and deliver or cause the certificate to be mailed or delivered to the purchaser or transferee at the time of the delivery to the purchaser or transferee of the vehicle. The certificate shall show the payment or satisfaction of any security interest as shown on the original title.

(5) Upon the delivery of a motor vehicle and the transfer, sale, or assignment of the title or interest in a motor vehicle by a person, including a dealer, the effective date of the transfer of title or interest in the vehicle shall be the date of execution of either the application for title or the certificate of title.

“Notwithstanding any delay in forwarding the certificate of title to the Secretary of State, title to a motor vehicle passes upon delivery of a properly executed assignment of certificate of title.” *Shank v Kurka*, 174 Mich App 284, 287; 435 NW2d 453 (1988) (citation omitted). Further, that the new owner's name does not appear on the certificate of title does not by itself indicate that ownership has not passed to that new owner. *Id.*, citing *Karibian v Paletta*, 122 Mich App 353, 357-358; 332 NW2d 484 (1983).

Thus, the witness' repeated testimony that no transfer of ownership took place until all the paperwork, including the purchaser's name, was filed with the Secretary of State, misled the jury regarding the main question before it. Therefore, the trial court erred in admitting the witness' opinion with respect to whether the legal standard for transfer of ownership was met under the facts of this case. “If the question calls for a conclusion for which there is a legal standard, it may not be the subject of opinion as to whether or not the person or conduct measures up to that standard.” *Bank of Lansing v Stein, Hinkle, Daw & Assocs Architects*, 100 Mich App 719, 726; 300 NW2d 383 (1980). We therefore conclude that the trial court abused its discretion in overruling Woodlawn's objections and admitting the testimony.

Furthermore, plaintiff's counsel exploited the error during closing arguments, telling the jury, “the Secretary of State guy took the stand and he was telling us some *legal* stuff about how they look at the transfer of a title” (emphasis added). Additionally, the trial court itself compounded the error by asking the witness “what determines transfer of ownership . . . ?” Plaintiff's counsel's statements and the trial court's question suggested to the jury that the witness' testimony regarding the records and machinations of the Secretary of State bore directly on the question of legal ownership of the vehicle involved in the instant case.

² Amendments taking effect October 1, 1999 have resulted in the renumbering of subsections (4) and (5) respectively as (8) and (9).

Although the trial court correctly instructed the jury generally on the law of vehicle transfer at the close of proofs, the court denied Woodlawn's repeated requests for an instruction specifically addressing the witness' misleading testimony concerning when ownership actually transferred. Because the trial court did not instruct the jury specifically that, contrary to the witness' testimony, the certificate of title need not bear the buyer's name to effect a valid transfer of ownership, the witness' statements were left substantially uncorrected. The jury thus deliberated without the benefit of any disclaimer concerning the witness' repeated testimony that ownership remained with the transferor unless and until the certificate of title bore the name of the transferee. Because that testimony invited misapplication of the law by the jury on the crucial question before it, the trial court abused its discretion in sending the case to the jury without a curative instruction specifically concerning that testimony.

Finally, Woodlawn argues that the trial court improperly allowed plaintiff's counsel to impugn the motives of opposing counsel, to suggest that the lawyer representing Jenkins was too costly for Jenkins himself to afford, and that Jenkins' lawyer was really present for the benefit of Woodlawn. We agree. The arguments of plaintiff's counsel revealed a "studied purpose to prejudice the jury and divert the jurors' attention from the merits of the case." *Kern v St Luke's Hospital Ass'n*, 404 Mich 339, 354; 273 NW2d 75 (1978), citing *Firchau v Foster*, 371 Mich 75, 78-79; 123 NW2d 151 (1963).

Calling into question the honesty and integrity of opposing counsel is improper argument. *Eley v Turner*, 155 Mich App 195, 202; 399 NW2d 28 (1986). Although such action might not warrant reversal by itself, if combined with other improper argument plus a prejudicial evidentiary error, reversal may be required. *Id.* We conclude that this disparagement of opposing counsel, combined with the suggestions regarding the financing of Jenkins' defense and the error in admitting the testimony of the Secretary of State employee concerning when a transfer of ownership of a motor vehicle actually occurs, denied Woodlawn a fair trial.

Reversed and remanded for a new trial. We do not retain jurisdiction.

/s/ Helene N. White
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell